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Nos. 04-1020, 04-1033, 04-1036, 04-1045, and 04-1177

In the Supreme Court of the United States

MEDIA GENERAL, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

NATIONAL ASSOCIATION OF BROADCASTERS, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

TRIBUNE COMPANY, ET AL., PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

NEWSPAPER ASSOCIATION OF AMERICA, ET AL., PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

SINCLAIR BROADCAST GROUP, INC., CROSS-PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITIONS AND CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Section 202(h) of the Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 111-112, requires the Federal Communications Commission to determine periodically whether its rules governing ownership of federally licensed broadcast stations remain "necessary in the public interest," and to "repeal or modify" any such rule that the FCC determines is "no longer in the public interest." Pursuant to that directive, the FCC determined in this case to: (1) replace its ban on cross-ownership of daily newspapers and broadcast stations with a cross-media rule that permits such combinations in most markets; (2) relax its local television ownership rule to generally allow common ownership of two or (in larger markets) three television stations; and (3) modify its local radio ownership rule by tightening the rule in some respects and loosening it in other respects. The questions presented are:

1. Whether the FCC's revised broadcast ownership rules violate the First or Fifth Amendment rights of newspaper owners and broadcast station licensees.

2. Whether the FCC's revised broadcast ownership rules violate Section 202(h) of the 1996 Act.

3. Whether the FCC's revised broadcast ownership rules are supported by a reasoned analysis under the Administrative Procedure Act.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-190a[1]) is reported at 373 F.3d 372. The report and order of the Federal Communications Commission (Pet. App. 206a-723a) is reported at 18 F.C.C.R. 13,620.

JURISDICTION

The judgment of the court of appeals was entered on June 24, 2004. A petition for panel rehearing was granted in part on September 3, 2004 (Pet. App. 191a-193a). On November 22, 2004, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including January 3, 2005, and on December 21, 2004, Justice Souter further extended the time within which to file a petition for a writ of certiorari to and including January 31, 2005. The petitions in Nos. 04-1020, 04-1033, 04-1036, and 04-1045 were filed on January 28 and January 31, 2005. The cross-petition in No. 04-1177 was filed on March 2, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Communications Act of 1934 (Communications Act), 47 U.S.C. 151 *et seq.*, establishes a comprehensive framework for federal regulation of the transmission and use of radio signals in the United States. The Act establishes a federal policy of "maintain[ing] the control of the United States over all the channels of radio transmission" and "provid[ing] for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority." 47 U.S.C. 301. The Act thus requires persons seeking to engage in radio or television broadcasting to obtain a broadcast license

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[1] Unless otherwise indicated, "Pet. App." refers to the appendix to the petition for a writ of certiorari in No. 04-1020.

for a limited, but renewable, period of time from the Federal Communications Commission, *ibid.*, and prohibits the assignment or transfer of any such license without the Commission's prior approval, 47 U.S.C. 309(h), 310(d).

Before it may grant, renew, or approve the assignment or transfer of a broadcast license, the Commission must conclude that such action would serve the "public interest, convenience, and necessity." 47 U.S.C. 309(a), 310(d); see 47 U.S.C. 309(k). Among the policies the Commission has advanced in exercising its broadcast licensing responsibilities is a policy favoring diversification of mass media ownership as benefiting the public interest "by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power." *FCC* v. *National Citizens Comm. for Broad.*, 436 U.S. 775, 780 (1978) (*NCCB*).

To facilitate even-handed implementation of its policies and to provide certainty to the broadcast industry, the Commission has adopted generally applicable regulations that embody its judgments about the circumstances in which the issuance, assignment, or transfer of a broadcast station license would serve the public interest. See, *e.g.*, *United States* v. *Storer Broad. Co.*, 351 U.S. 192, 202-205 (1956). Those regulations have long imposed limits on the number of radio or television stations a single party may own nationally or in a local market, as well as limits on cross-ownership of broadcast stations and other media in the same market. See, *e.g.*, *ibid.* (upholding ownership limits on radio and television stations); *NCCB*, 436 U.S. at 793-802 (upholding prohibition on cross-ownership of daily newspapers and broadcast stations). The Commission deems proposed broadcast combinations that violate its ownership limits inconsistent with the public interest, absent a showing that waiver of a rule is warranted in a particular case. See *id.* at 793; *Storer Broad. Co.*, 351 U.S. at 205; *National Broad. Co.* v. *United States*, 319 U.S. 190, 225 (1943) (*NBC*).

2. In the Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 56, Congress directed the Commission to make a number of changes to its broadcast ownership rules. See 1996 Act § 202(a)-(f), 110 Stat. 110-111. In addition, Section 202(h) of the 1996 Act imposed a general duty on the Commission to review its ownership rules periodically to determine "whether any of such rules are necessary in the public interest as the result of competition," 110 Stat. 112, and to "repeal or modify any regulation it determines to be no longer in the public interest." *Ibid.* Section 202(h) originally directed the Commission to review its ownership rules biennially, 110 Stat. 111, but in 2004, while this case was pending in the court of appeals, Congress amended the statute to provide for Commission review every four years. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. B, § 629, 118 Stat. 99.

In a pair of cases decided in 2002, the D.C. Circuit examined the effect of Section 202(h) on the Commission's authority to regulate broadcast ownership in the public interest. First, in *Fox Television Stations, Inc.* v. *FCC*, 280 F.3d 1027, modified on reh'g, 293 F.3d 537 (2002), the D.C. Circuit examined the Commission's decision in the first biennial review under Section 202(h) to retain without modification existing rules on national television station ownership and on cross-ownership of television stations and cable systems in local markets. The court emphasized that "nothing in § 202(h) signals a departure from [the] historic scope" of the Commission's public interest authority. *Id.* at 1042. The court concluded that Section 202(h) requires the Commission, if it decides to retain a particular ownership rule, to provide an adequate explanation for its decision that accounts for the state of competition in the relevant media markets.[2] See *id.* at

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[2] The *Fox* panel initially interpreted the phrase "necessary in the public interest" in Section 202(h) to mean that a "regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest." 280 F.3d at 1050. On rehearing, the panel modified its decision to leave open

1042, 1044. Because, in the court's view, the Commission had not adequately explained its decision to retain the national television and cable-television cross-owner rule, the court remanded those rules to the Commission for further consideration. [3]

In *Sinclair Broadcast Group, Inc.* v. *FCC*, 284 F.3d 148 (2002), the D.C. Circuit remanded (but did not vacate) the Commission's 1999 revision of the local television ownership rule. The revised rule allowed common ownership of two television stations in a local market where neither station is among the top-four rated stations in the market (the "top-four" test) and the market contains at least eight other "voices," which the Commission defined as independently owned and operating, full-power television stations. The *Sinclair* court recognized that the Commission "has wide discretion to determine where to draw administrative lines." *Id.* at 162, 170 (internal quotation marks omitted). The court remanded the rule, however, because it concluded that the Commission had not adequately explained why it counted only television stations as voices in the local television ownership rule, while counting other media outlets (including daily newspapers and cable systems) as voices in its rule governing cross-ownership of radio and television stations. *Id.* at 164.

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the question of the standard that the Commission must meet under Section 202(h). 293 F.3d at 541. In *Cellco Partnership* v. *FCC*, 357 F.3d 88 (2004), the D.C. Circuit subsequently held that the Commission reasonably interpreted similar language in Section 11 of the Communications Act, 47 U.S.C. 161, to require it only to "reevaluate regulations in light of current competitive market conditions to see that the conclusion [it] reached in adopting the rule—that [the rule] was needed to further the public interest—remains valid." 357 F.3d at 98 (internal quotation marks omitted).

[3] Although the *Fox* court vacated the cable-television cross-ownership restriction, it remanded the national television ownership rule without vacating it because the court concluded that the Commission might be able to justify retention of the rule on remand. 280 F.3d at 1049.

3. In September 2002, the Commission initiated its third biennial proceeding under Section 202(h) to review its broadcast ownership rules. *2002 Biennial Regulatory Review*, 17 F.C.C.R. 18,503 (2002). The 2002 biennial review sought comment on the D.C. Circuit's decisions in *Fox* and *Sinclair*. *Id.* at 18,508-18,512 ¶¶ 12-19. The proceeding also incorporated other rulemaking proceedings that the Commission had previously initiated to reexamine its regulations governing local radio station ownership and cross-ownership of daily newspapers and broadcast stations. *Id.* at 18,506 ¶ 7.

The consolidated biennial review proceeding culminated on July 2, 2003, with the release of the Report and Order at issue in this case. As relevant here, the Report and Order established a single new cross-media rule to govern cross-ownership of daily newspapers, television stations, and radio stations, and modified two other rules that limit common ownership of multiple radio and multiple television stations in a local market.

Cross-media rule. The cross-media rule replaced, *inter alia*, the blanket prohibition on common ownership of daily newspapers and broadcast stations that this Court upheld in *NCCB*. The cross-media rule prohibits combinations involving a daily newspaper and a broadcast station, or a radio station and a television station, in local markets with three or fewer television stations. Pet. App. 521a-522a (Order ¶ 454); 04-1036 Pet. App. 661a. In local markets that have four to eight television stations, such cross-media combinations are permitted with certain limitations. Pet. App. 530a (Order ¶ 466); 04-1036 Pet. App. 661a. In local markets with nine or more television stations, the Commission imposed no cross-media limit. Pet. App. 534a (Order ¶ 473).

Local television ownership rule. In response to the decision in *Sinclair*, the Commission relaxed the local television ownership rule by replacing the "eight-voice" test with a tiered approach in which ownership limits are tied to the number of television stations in the market. Under the revised rule, a party may

own two commercial television stations in individual markets with 17 or fewer television stations and three commercial stations in markets with 18 or more television stations. Pet. App. 290a-291a (Order ¶ 134); 04-1036 Pet. App. 660a-661a. The revised rule continues to prohibit combinations involving the four highest-rated television stations in the market. Pet. App. 331-332a (Order ¶ 186); 04-1036 Pet. App. 661a. That "top four" restriction thus precludes common ownership of multiple television stations in markets with four stations or fewer.

Local radio ownership rule. The Commission did not modify the numerical limits in the local radio ownership rule, which Congress had directed the Commission to establish in the 1996 Act. See 1996 Act § 202(b), 110 Stat. 110. The Commission did revise the method of determining the scope of the radio market to which the fule's numerical limits apply, Pet. App. 390a-391a (Order ¶¶ 273-274); it required inclusion of noncommercial radio stations when counting the number of radio stations in the market, *id.* at 408a (Order ¶ 295), see 04-1036 Pet. App. 659-660a; and it counted certain agreements concerning the sale of radio advertising (commonly called "Joint Sales Agreements") as ownership interests for purposes of applying the ownership limits, Pet. App. 422a-429a (Order ¶¶ 316-325); see also 04-1036 Pet. App. 664a-665a.[4]

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[4] The 2002 biennial review also addressed two other rules related to ownership of television stations. The Commission decided to retain its "dual network" rule, which prohibits mergers among the top-four broadcast television networks (ABC, NBC, CBS, and Fox). Pet. App. 610a-629a (Order ¶¶ 592-621). That decision was not challenged in the court of appeals. In addition, the Commission relaxed its national television ownership rule to allow common ownership of television stations that reach 45% (as opposed to the previous limit of 35%) of the national television audience. *Id.* at 552a-610a (Order ¶¶ 499-591). In 2004, while this case was pending before the court of appeals, Congress amended the 1996 Act to increase the national television audience reach limitation from 35% to 39%, and provided that rules relating to that limitation would no longer be subject to the now-quadrennial review

4. Petitions for review were filed in several circuits, triggering a judicial lottery under 28 U.S.C. 2112(a)(3). The Third Circuit was selected to review the Commission's decision. On September 3, 2003, the court of appeals stayed the Commission's revised rules pending its review of the Report and Order. Pet. App. 194a-196a. The court also declined to transfer the case to the Court of Appeals for the District of Columbia Circuit. *Id.* at 197a-205a.

5. a. On June 24, 2004, the Third Circuit issued its decision on the merits. All three judges on the panel determined that the Commission's limits on broadcast ownership do not violate the First and Fifth Amendment rights of newspaper owners and broadcasters. Pet. App. 45a-48a.[5] The court stated that petitioners' First Amendment arguments were foreclosed by *NCCB*, in which this Court upheld the nationwide ban on newspaper-broadcast cross-ownership as "a reasonable means of promoting the public interest in diversified mass communications." *Id.* at 46a (quoting *NCCB*, 436 U.S. at 802). In addition, the court stated that, even if *NCCB* did not control, it would assess petitioners' First Amendment challenge under rational-basis review in light of the continuing physical scarcity of broadcast spectrum. *Id.* at 47a (noting that "many more people would like access to [broadcast spectrum] than can be accommodated"). Similarly, the court of appeals concluded that petitioners' equal protection claims were foreclosed by this Court's rejection in *NCCB* of an equal protection challenge to the newspaper-broadcast cross-ownership restriction. *Id.* at 45a-46a. The court added that the devel-

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process. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. B, § 629, 118 Stat. 99. The court of appeals in this case found that the challenge to that limitation was thereby rendered moot. See Pet. App. 36a-38a.

[5] Although Chief Judge Scirica did not join the panel majority's analysis of the petitioners' constitutional claims, his conclusion that the Commission's ownership rules should have been affirmed is an implicit rejection of such claims. See Pet. App. 190a.

opment of more media outlets since *NCCB* was not a basis for reaching a different result, because it could not be "assumed that these media outlets contribute significantly to viewpoint diversity as sources of *local* news and information." *Id.* at 46a (emphasis added).

The court likewise rejected petitioners' arguments that Section 202(h) of the 1996 Act limited the Commission's authority to adopt more restrictive ownership rules and imposed a heightened burden on the Commission to justify any ownership limits that it decides to retain. Pet. App. 26a-36a; see *id.* at 124a (Scirica, J., dissenting) ("[T]he statute does not foreclose the possibility of increased regulation under the biennial review if the Commission finds such action in the public interest.").

b. In a portion of the panel opinion from which Chief Judge Scirica dissented, the court of appeals concluded that the Commission's cross-media rule and local television and radio rules should be remanded for "additional justification or modification." Pet. App. 12a. For each of the three rules, the majority rejected the specific limits that the Commission had adopted (or, in the case of the local radio rule, retained). The majority emphasized that it was not passing final judgment on the ultimate permissibility of the particular ownership limits chosen by the Commission. Instead, the court stated, "the Commission gets another chance to justify its actions." *Id.* at 12a n.3.

Cross-Media Rule. The court of appeals held that the Commission's determination that "the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest" was "justified under § 202(h) [of the 1996 Act] and is supported by record evidence." Pet. App. 40a; see *id.* at 40a-44a. But the court concluded that some aspects of the Commission's new cross-media rule, which replaced the newspaper/broadcast cross-ownership ban, were not supported by a "reasoned analysis." *Id.* at 48a. The majority focused its criticism on the Commission's use of a Diversity Index, a tool based loosely on the

Herfindahl-Hirschman Index used in antitrust analysis, to inform its judgment in setting ownership limits for local media markets of various sizes. See *id.* at 49a. In particular, the majority rejected the Commission's decision to evaluate diversity by assigning equal weight to "all outlets within the same media type (that is, television stations, daily papers, or radio stations)." *Id.* at 58a. The court also found the Diversity Index flawed because, in the view of the panel majority, it "gave too much weight to the Internet as a media outlet," *id.* at 49a, and "allow[ed] some combinations where the increases in Diversity Index scores were generally higher than for other combinations that were not allowed," *id.* at 63a.

Local Television Ownership Rule. The court of appeals likewise remanded, for further consideration by the agency, the specific local television ownership limits that the Commission had adopted. Pet. App. 76a-79a. In constructing the local television rule, the Commission had begun with the goal of preserving six equal-sized competitors (see *id.* at 335a-336a (Order ¶ 192)), and, except for purposes of applying the top-four restriction, it treated each television station in the market as having equal significance. *Id.* at 76a. The court upheld the Commission's decision to retain the top-four restriction. But, in line with its analysis of the cross-media limits, the panel majority stated that in its view "no evidence" supported the Commission's equal weighting of local stations in setting ownership limits and further concluded that such weighting was unreasonable insofar as it allowed concentration—as measured by audience share—to exceed a Herfindahl-Hirschman Index level of 1800. *Id.* at 78a; see generally U.S. Dep't of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 1.5 (rev. Apr. 8, 1997) (designating markets with a level above 1800 as "highly concentrated"). The court therefore remanded the numerical limits for local television ownership "for the Commission to support and harmonize its rationale." Pet. App. 79a.

Local Radio Ownership Rule. The court upheld much of the Commission's approach to local radio ownership, including the Commission's decision to adopt a new methodology for delineating local radio markets, Pet. App. 90a, and to count noncommercial stations and Joint Sales Agreements for purposes of applying the ownership rules, *id.* at 90a-91a, 96a-99a. But the court concluded that the Commission's decision to retain the specific ownership limits that had been adopted by Congress in 1996 was not supported by "reasoned analysis." *Id.* at 102a. In doing so, the panel majority again rejected the Commission's reliance on a benchmark that evaluated competition or diversity in terms of number of outlets rather than audience shares. *Id.* at 104a-106a. In the majority's view, "[i]t defies logic to assume that a combination of top-ranked stations is the competitive equal to a combination of low-ranked stations just because the two combinations have the same number of stations." *Id.* at 104a.

c. Chief Judge Scirica dissented from the court of appeals' decision to remand the FCC's ownership rules. In the Chief Judge's view, the majority had "substituted its own policy judgment for that of the * * * Commission." Pet. App. 108a. Noting that "[i]t is not the role of the judiciary to second-guess the reasoned policy judgments of an administrative agency acting within the scope of its delegated authority," the Chief Judge explained that he would have upheld the order on review, lifted the stay, and allowed the Commission's revised rules to go into effect. *Ibid.*

6. In issuing its decision, the court of appeals extended its stay of the Commission's revised broadcast ownership rules "pending [the court's] review of the Commission's action on remand." Pet. App. 107a. On September 3, 2004, in response to the government's petition for panel rehearing, the court partially lifted its stay to permit the Commission's revised local radio ownership rules—which the court had largely upheld—to go into effect. *Id.* at 193a. The court denied the government's rehearing

petition in other respects, however, and the cross-media limits and the local television ownership rules remain stayed.

ARGUMENT

Petitioners in this case are newspaper and broadcast industry parties, most of whom challenged the Commission's ownership regulations in the court of appeals. In Nos. 04-1020, 04-1036, and 04-1045, petitioners contend that the ownership regulations, particularly the cross-media rule, violate the First and Fifth Amendments to the United States Constitution. In Nos. 04-1033, 04-1036, and 04-1045, petitioners assert that the ownership rules under review had to be relaxed further—and could in no event be tightened—under Section 202(h) of the 1996 Act. Finally, petitioners in No. 04-1045—who intervened in the court of appeals in support of the FCC's cross-media rule—seek review of the Third Circuit's decision to remand and stay, rather than affirm, the Commission's revised ownership rules. None of the petitions raises any issue that merits further review by this Court in the present posture of the case.

I. FURTHER REVIEW IS UNWARRANTED BECAUSE OF THE INTERLOCUTORY POSTURE OF THIS CASE

1. This case is in an interlocutory posture and therefore does not provide an appropriate vehicle for addressing petitioners' claims. See, *e.g.*, *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (declining to exercise certiorari jurisdiction where the court of appeals had remanded the case); *Virginia Military Inst.* v. *United States*, 508 U.S. 946 (1993) (opinion of Scalia, J.); see generally Robert Stern et al., *Supreme Court Practice* § 4.18, at 258 (8th ed. 2002). That is particularly true with respect to petitioners' constitutional claims, which ask this Court to reconsider long-established doctrines and overrule past precedents against the backdrop of an unsettled regulatory regime.

Had the Third Circuit upheld the new broadcast ownership rules, this case would have presented the question whether those otherwise-valid rules could survive the stricter constitutional standards petitioners advocate. The court of appeals, however, rejected aspects of the Commission's explanations of those rules and generally stayed the rules' effectiveness pending reconsideration by the FCC on remand. In the current posture of this case, therefore, there is an unreversed determination that the Commission failed adequately to justify the new rules under ordinary, nonconstitutional standards applicable to judicial review of administrative action. In light of that ruling, and absent this Court's review of the court of appeals' case-specific application of the Administrative Procedure Act standards to the FCC's determinations, the case does not present at this time the question whether the new rules are constitutional.

Nor does this case squarely present the question whether the prior broadcast ownership rules would satisfy the new, more stringent constitutional standard petitioners advocate. The old rules were not challenged in this proceeding and, although they are temporarily now back in force due to the Third Circuit's stay of the new rules, they are likely to be changed as a result of the remand proceedings. Petitioners' constitutional challenges are thus in effect directed to future rules—as yet unadopted—that the Commission may choose to promulgate after remand, and not to any ownership rules in place today.

As this Court has long emphasized, weighty prudential considerations counsel against unnecessary pronouncements on constitutional matters; without a concrete application of the constitutional standard to a particular governmental action or rule, the Court cannot be certain that resolution of a constitutional issue is necessary.[6] The Court's reluctance to entertain abstract issues of

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[6] See, *e.g.*, *Spector Motor Serv.* v. *McLaughlin*, 323 U.S. 101, 105 (1944) ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of

constitutional law is also based on the benefits to the Court's decisionmaking process of the context provided by a particular concrete dispute; such a context is likely to help focus the Court's attention on important aspects of the legal problem and on consequences of the Court's decision that might otherwise be obscured. Because "all contingencies of attempted enforcement cannot be envisioned in advance of those applications," this Court has "found it wiser to delay passing upon the constitutionality" of a statute or regulation "until faced with cases involving particular provisions as specifically applied to persons who claim to be injured." *Watson* v. *Buck*, 313 U.S. 387, 402 (1941).

2. The interlocutory posture of the case also counsels against further review of the nonconstitutional issues presented by petitioners. In remanding the FCC's revised ownership rules, the Third Circuit correctly articulated the deferential standard of review that courts must apply in examining the Commission's ownership rules. See, *e.g.*, *NCCB*, 436 U.S. at 794; *NBC*, 319 U.S. at 219. Moreover, the court of appeals emphasized that it was not finally passing judgment on the validity of the new broadcast ownership rules, but was merely remanding for what it perceived to be an inadequacy in the Commission's justification for "certain aspects" of the new rules. Pet. App. 11a. In response to the claim that "the Commission's work * * * comes close enough to merit our approval," the court's response was "not yet." *Id.* at 12a n.3; see *ibid.* ("[T]he Commission gets another chance to justify its actions.").[7] Although the government believes the court erred in

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constitutionality * * * unless such adjudication is unavoidable."); see also *Minnick* v. *California Dep't of Corr.*, 452 U.S. 105, 122 n.30 (1981); *Rescue Army* v. *Municipal Ct.*, 331 U.S. 549, 568-569 (1947).

[7] See also Pet. App. 58a ("On remand the Commission must either exclude the Internet from the media selected for inclusion in the Diversity Index or provide a better explanation for why it is included in light of the exclusion of cable."); *id.* at 61a ("[W]e remand for the Commission's additional consideration of this aspect of the Order."); *id.* at 79a ("We remand the numerical limits for

failing to uphold the new rule, the factbound question whether the Commission adequately provided sufficient justifications for its new rules does not warrant further review. The Third Circuit's decision to remand rather than affirm was thus a "misapplication of a properly stated rule of law" that does not warrant the exercise of this Court's certiorari jurisdiction if the case is not otherwise before the Court on the merits. Sup. Ct. R. 10. The Court should deny review in this case and allow the Commission on remand to decide what broadcast ownership rules are appropriate, and to explain why they are justified.

II. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONERS' CONSTITUTIONAL CHALLENGES TO THE FCC'S BROADCAST OWNERSHIP REGULATIONS

A. The FCC's Broadcast Ownership Rules Are Not Subject to Heightened Scrutiny Under the First Amendment

1. The court of appeals applied settled law when it concluded that the FCC's broadcast ownership rules must be upheld under the First Amendment if they are "rationally related to a substantial governmental interest." Pet. App. 47a. It is "well established" that Congress "has power to regulate the use of [broadcast spectrum as] a scarce and valuable national resource," and to "ensure through the regulatory oversight of the FCC that only those who satisfy the 'public interest, convenience, and necessity' are granted a license to use radio and television broadcast frequencies." *FCC* v. *League of Women Voters*, 468 U.S. 364, 376 (1984) (quoting 47 U.S.C. 309(a)). As this Court stated in *NCCB*, "nothing in the First Amendment * * * prevent[s] the Commission from allocating licenses so as to promote the 'public interest' in diversification of the mass communications media." 436 U.S. at 799. "Denial of a station license" on public interest grounds, "if

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the Commission to support and harmonize its rationale."); *id.* at 102a ("We thus remand for the Commission's additional justification.").

valid under the Act, is not a denial of free speech." *NBC*, 319 U.S. at 227.

There is no basis for Tribune's assertion (04-1036 Pet. 13) that the Third Circuit's decision creates "conflict and uncertainty" regarding the First Amendment analysis applicable to the FCC's ownership regulations. Although Tribune cites (04-1036 Pet. 14) individual judges who have expressed a range of views on the proper First Amendment analysis of broadcast regulation generally, the critical views cited by petitioners were generally directed at *content* regulation, not *ownership* regulations like those at issue here.[8] The courts of appeals that have reviewed the FCC's broadcast ownership regulations uniformly have applied the same, established standard. See *Fox*, 280 F.3d at 1046 ("the deferential review undertaken by the Supreme Court in *NCCB* and *NBC* is also appropriate here"); *Sinclair*, 284 F.3d at 168 ("Sinclair does not have a First Amendment right to hold a broadcast license where it would not [under the Commission's ownership regulations] satisfy the public interest."). There is no conflict in the circuits on the constitutional issues petitioners present.

The Third Circuit held (Pet. App. 46a), and Media General effectively concedes (04-1020 Pet. 25). that petitioners' constitutional contentions are "foreclosed" by this Court's decision in *NCCB*. Petitioners nonetheless contend (04-1020 Pet. 22-23; 04-1036 Pet. 13, 15-16; 04-1045 Pet. 26) that the growth in the number of licensed broadcast stations since *NCCB*, and the development of non-broadcast media outlets, justify overruling *NCCB* and mandating heightened scrutiny of the FCC's ownership regulations under the First Amendment. The Third Circuit correctly rejected that argument and its reliance on changed market condi-

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[8] The only decision of a court of appeals—as opposed to opinions by individual judges—cited by Tribune concerned whether the FCC could engage in "political content regulation" of broadcasting speech, *Telecommunications Research & Action Ctr.* v. *FCC*, 801 F.2d 501, 506 (D.C. Cir. 1986), and the court's discussion focused on that issue.

tions. Pet. App. 47a. As stated in *NCCB* and other decisions of this Court, deference to the FCC's licensing policies arises from the bedrock principle that access to radio frequencies, "unlike other modes of expression, * * * is subject to governmental regulation" because there is a "fixed natural limitation upon the number of stations that can operate without interfering with one another." *NBC*, 319 U.S. at 213, 226. See *NCCB*, 436 U.S. at 799 ("[B]ecause of problems of interference between broadcast signals," only "a finite number of frequencies"—"far exceeded by the number of persons wishing to broadcast"—"can be used productively."); see also *Turner Broad. Sys.* v. *FCC*, 512 U.S. 622, 637 (1994) ("The justification for our distinct approach to broadcast regulation rests upon the unique physical limitations of the broadcast medium."). In the Communications Act, Congress addressed those physical limits by exercising federal "control * * * over all the channels of radio transmission," 47 U.S.C. 301, and vesting in the FCC the responsibility for ensuring that access to broadcast spectrum is provided only in accordance with the "public interest." 47 U.S.C. 301, 309(a), 310(d); see also *NBC*, 319 U.S. at 214-215, 226.

As this Court has consistently held, the FCC's lawful exercise of its licensing authority does not violate the constitutional rights of those who are denied broadcast licenses, because the "right of free speech does not include * * * the right to use the facilities of radio without a license." *NBC*, 319 U.S. at 226-227; see *NCCB*, 436 U.S. at 799. Although there are today more broadcast and non-broadcast outlets than there were when the *NCCB* decision was rendered, it remains the case that "many more people would like access to [spectrum] than can be accommodated." Pet. App. 47a; see *Turner*, 512 U.S. at 637 (noting that there are "more would-be broadcasters than frequencies available in the electro-

magnetic spectrum"). The core reason for deferential review of the Commission's licensing policies therefore continues in force.[9]

Of course, as the Commission has found, the modern growth in media outlets is relevant to setting an appropriate limitation on common ownership as a matter of communications policy. For instance, the Commission concluded in this case that the presence of numerous competing media outlets in most markets warranted relaxation of the prior "blanket prophylactic ban on newspaper-broadcast combinations," Pet. App. 432a (Order ¶ 330); see also *id.* at 461a-464a (Order ¶¶ 365-367), and the court of appeals agreed in principle, see Pet. App. 40a-44a. The Commission's new cross-media rule takes account of those marketplace changes by permitting newspaper-broadcast combinations in markets with four or more television stations—markets in which 97% of the U.S. population reside—and eliminating cross-ownership restrictions entirely in large media markets (including the Tampa Bay market highlighted by Media General, see 04-1020 Pet. 5-6). The FCC's decision to ease ownership restrictions, however, does not suggest that deferential judicial review of those restrictions is no longer required.

2. Instead of grappling with this Court's controlling decisions in *NCCB* and *NBC*, petitioners focus their attack on the Court's

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[9] Contrary to Media General's contention (04-1020 Pet. 12-13), this Court's settled analysis of broadcast regulation is entirely consistent with the Court's determination in *Turner* and *Reno* v. *ACLU*, 521 U.S. 844 (1997), not to apply the mode of analysis employed in *NBC* and *NCCB* to regulation of cable television and the Internet. As the Court explained, those other media do not present the same physical scarcity and interference concerns that necessitate governmental licensing of broadcast spectrum. See *Turner*, 512 U.S. at 639 ("given the rapid advances in fiber optics and digital compression technology," cable does not suffer from broadcasting's "inherent limitations," "[n]or is there any danger of physical interference between two cable speakers attempting to share the same channel."); *Reno*, 521 U.S. at 870 (noting that the Internet "can hardly be considered a 'scarce' expressive commodity" because "[i]t provides relatively unlimited, low-cost capacity for communications of all kinds.").

decision in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). In *Red Lion*, this Court considered whether the FCC's former "fairness doctrine," which required broadcasters to "give adequate coverage to public issues" that "accurately reflects * * * opposing views," violated broadcasters' First Amendment rights. *Id.* at 377. The Court recognized that the fairness doctrine imposed on broadcasters a duty to air views and opinions with which they may not have agreed. *Id.* at 392 (noting that the fairness doctrine prevented broadcasters from "communicat[ing] only their own views on public issues" and "permit[ting] on the air only those with whom they agreed."). The Court concluded, however, that "licensees given the privilege of using scarce radio frequencies" may be required "to share [their] frequenc[ies] with others" and to act as "prox[ies] or fiduciar[ies] with obligations to present those views and voices which are representative of [their] communit[ies]." *Id.* at 389, 394. *Red Lion* remains good law. See, *e.g.*, *McConnell* v. *FEC*, 540 U.S. 93, 237, 241 (2003) (citing *Red Lion*).

Petitioners contend that the FCC's own determination in 1987 that the scarcity of broadcast frequencies no longer justified retention of the fairness doctrine, see *In re Syracuse Peace Council*, 2 F.C.C.R. 5043 (1987), aff'd, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990), calls into question the deferential review that courts have traditionally accorded the FCC's broadcast ownership rules. 04-1020 Pet. 19-20; 04-1036 Pet. 16-17; 04-1045 Pet. 26-27 n.17. There is no basis for that view. In repealing its fairness doctrine, the Commission determined that, in light of the development of new media outlets, spectrum scarcity in itself no longer justified the "intrusive type of content-based regulation" that the fairness doctrine imposed on broadcasters' editorial discretion. *Syracuse Peace Council*, 2 F.C.C.R. at 5054 ¶ 76; see *id.* at 5054 ¶ 72, 5068 nn.201-202. The Commission stressed, however, that "technological advancements * * * have not eliminated spectrum scarcity," *id.* at 5055 ¶ 78, and that its

analysis of the constitutionality of the fairness doctrine had no "relevance to the Commission's allocational and licensing function." *Id.* at 5069 n.204. Insofar as any doubt remained, the Commission later "ma[d]e clear that the dicta in *Syracuse Peace Council* regarding the appropriate level of First Amendment scrutiny has been rejected by Congress, this Commission, and the courts." *Repeal or Modification of the Personal Attack and Political Editorial Rules*, 15 F.C.C.R. 19,973, 19,979 ¶ 17 (2000); see *Radio-Television News Dirs. Ass'n* v. *FCC*, 229 F.3d 269 (D.C. Cir. 2000) (related reference). *Syracuse Peace Council* thus provides no support for petitioners' position. The physical limitations of the broadcast airwaves continue to justify the Communications Act's system for "allocat[ing] broadcast licenses in the 'public interest.'" *NCCB*, 436 U.S. at 795.[10]

Equally unconvincing is petitioners' contention that Congress has sent a "signal" that the FCC's ownership regulations should be subject to a higher level of scrutiny under the First Amendment. See 04-1036 Pet. 16 (quoting *League of Women Voters*, 468 U.S. at 376 n.11); 04-1045 Pet. 26-27 n.17. Congress has not in

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[10] Contrary to Tribune's contention (04-1036 Pet. 15), the Commission's determination that relaxation of the prior newspaper-broadcast cross-ownership prohibition (and its proposed elimination in larger markets) can produce public interest benefits in terms of local news coverage does not affect the constitutional analysis of continued cross-media limits in small- and mid-sized markets. *NCCB* recognized that, in giving effect to the public interest, the Commission must balance the goal of promoting diversity of ownership with the "sometimes conflicting" public interest goal of ensuring "the best practicable service to the public." 436 U.S. at 782 (quoting *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C.2d 393, 394 (1965)). The Communications Act does not require the Commission to give either policy "controlling weight in all circumstances," but leaves that "weighing of policies" under the public interest standard to the Commission's judgment "in the first instance." *Id.* at 810. In this case, the Commission balanced the public interest benefits from broadcaster/newspaper combinations against the significant increases in concentration that can result from such combinations in small to medium size markets. Pet. App. 528a-533a (Order ¶¶ 462-471).

relevant respects amended or repealed the provisions of the Communications Act that confer on the Commission the authority to regulate the distribution of broadcast licenses in the public interest (see pp. 2-3, *supra*), nor has it enacted any statute that directs reviewing courts to apply heightened scrutiny to the FCC's ownership regulations. Petitioners' suggestion of a congressional "signal" is particularly weak with respect to rules restricting cross-ownership of newspapers and broadcast stations: Between 1988 and 1996, Congress prohibited the FCC from making any changes to the former newspaper-broadcast cross-ownership prohibition,[11] and, notwithstanding the fact that Congress in the 1996 Act directed the FCC to modify or reevaluate several of its then-existing media ownership rules, it did not mention that prohibition at all.

3. There is no basis for Media General's argument (04-1020 Pet. 26-30) that, notwithstanding this Court's holding in *NCCB* that newspaper/television cross-ownership regulations "are not content related," 436 U.S. at 801, the broadcast ownership rules should be subject to heightened scrutiny as content-based restrictions on speech. The "principal inquiry in determining content

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[11] See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989, Pub. L. No. 100-459, 102 Stat. 2216-2217; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990, Pub. L. No. 101-162, 103 Stat. 1020-1021; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-515, 104 Stat. 2136; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-140, 105 Stat. 797; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1846; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994, Pub. L. No. 103-121, 107 Stat. 1166-1167; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies 1995 Appropriations and 1994 Supplemental Appropriations Act, 1995, Pub. L. No. 103-317, 108 Stat. 1738.

neutrality * * * is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989); cf. *Turner*, 512 U.S. at 643 ("[L]aws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral."). This Court and lower courts have consistently and correctly regarded the FCC's broadcast ownership regulations as content-neutral, because the regulations do not turn on—and the FCC in applying the regulations does not examine—the content of any message an applicant for a broadcast license may seek to convey. *NCCB*, 436 U.S. at 801; *Fox*, 280 F.3d at 1046 (ownership regulations are "structur[al]," not "content-based"); see *NBC*, 319 U.S. at 226.

B. The Cross-Media Rule Does Not Violate The Due Process or Equal Protection Principles of the Fifth Amendment

Petitioners contend (04-1020 Pet. 23-25; 04-1036 Pet. 19-24) that the cross-media rule violates due process and equal protection principles because it limits cross-media combinations among daily newspapers, television stations, and radio stations, but not cable systems, Internet websites, and other information-delivery technologies. It is well established, however, that "the fact that a law singles out a certain medium" for different treatment does not by itself establish a constitutional concern. *Turner*, 512 U.S. at 660 (citing *Leathers* v. *Medlock*, 499 U.S. 439 (1991)). Such distinctions are permitted where "'justified by some special characteristic of' the particular medium being regulated." *Turner*, 512 U.S. at 660-661 (quoting *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Rev.*, 460 U.S. 575, 585 (1983)).

Because daily newspapers, television stations, and radio stations are the "three media platforms that Americans turn to most often for local news and information," Pet. App. 520a (Order ¶ 452), the public interest goal of promoting diversity of ownership and viewpoint is more affected by consolidation among

broadcast stations and newspapers than by combinations involving other types of media. Focusing the cross-media rule on those media protects diversity while avoiding unnecessary regulation of other industries. Cf. *Turner*, 512 U.S. at 661 (given that non-cable video delivery systems do not present the "bottleneck" control or threat to the survival of broadcast television stations posed by cable systems, "[i]t should come as no surprise * * * that Congress decided to impose the must-carry obligation upon cable operators only").

There is no basis for Tribune's assertion (04-1036 Pet. 22-23) that the Third Circuit's equal protection holding conflicts with decisions of other courts of appeals. The Fourth and Ninth Circuit decisions that Tribune cites were both vacated by this Court, see 516 U.S. 415, 1155-1156 (1996), and, in any event, both of those circuits agreed with the Third Circuit's conclusion below that *NCCB* controlled the constitutional analysis of newspaper-broadcast cross-ownership restrictions. See *Chesapeake & Potomac Tel. Co.* v. *United States*, 42 F.3d 181, 191-192 (4th Cir. 1994); *U.S. West* v. *United States*, 48 F.3d 1092, 1098 (9th Cir. 1994). In *News American Pub'g, Inc.* v. *FCC*, 844 F.2d 800, 812 (D.C. Cir. 1988), it was critical to the court's analysis that the challenged prohibition was "structural only in form, as it applies to a closed class of one publisher broadcaster."

Petitioners' contention (04-1020 Pet. 24; 04-1036 Pet. 20-21) that the FCC was constitutionally required to apply the cross-media rule to cable systems and Internet websites ignores the particular characteristics of those media and the limitations of the record before the Commission. As the Commission explained below, its analysis of diversity focused on likely sources of *local* news and public affairs programming. Pet. App. 489a-490a (Order ¶ 406). The Commission did not treat cable systems or networks as a significant contributor to viewpoint diversity, because there was insufficient reliable record evidence on the extent to which consumers rely on cable television for such programming.

Id. at 494a-495a (Order ¶ 414). See *NCCB*, 436 U.S. at 815 (upholding divestiture of newspaper-broadcast combinations in small markets on the basis that other forms of media did not make similar contributions to viewpoint diversity in local markets). With respect to the Internet, it would have made little sense to apply the cross-media rule to that medium; although the Commission originally concluded (in findings set aside below) that the Internet contributes to diversity in local markets, the Internet is not itself "owned"—or otherwise controlled—by any single party, and the multiplicity of Internet outlets would make it virtually impossible to develop a meaningful or workable cross-ownership rule in that context.

III. SECTION 202(h) DOES NOT IMPAIR THE COMMISSION'S AUTHORITY TO ADOPT AND REVISE ITS OWNERSHIP RULES

1. The Third Circuit correctly rejected NAB's argument (see 04-1033 Pet. 19-25) that the FCC's decision to revise the definition of radio markets and to count Joint Sales Agreements as broadcast interests violated the 1996 Act because those changes had the effect of making the local radio ownership rule more restrictive. Pet. App. 34a; see *id.* at 124a n.98 (Scirica, J., dissenting). The FCC's broad powers under the Communications Act to advance the public interest have traditionally included the power to impose additional restrictions on media ownership. See *NCCB*, 436 U.S. at 780-781. As the court of appeals correctly observed, "Congress gave no express indication [in the 1996 Act] that it intended to restrict the Commission's rulemaking authority" to adopt such restrictions where supported by the agency record. Pet. App. 34a n.18 (citing *American Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 613 (1991) ("[I]f Congress had intended to curtail in a particular area the broad rulemaking authority [it has] granted[,] * * * we would have expected it to do so in language expressly describing an exception [to that authority].")); see *id.* at 124a (Scirica, C.J.,

dissenting) (stating that the 1996 Act "does not foreclose the possibility of increased regulation under the biennial review if the Commission finds such action in the public interest").

Contrary to the contentions of NAB and Clear Channel (04-1033 Pet. 20-21; Clear Channel Br. 21), Congress's decision to set the permissible levels of common ownership in Section 202(a) of the 1996 Act does not constrain the FCC's authority to regulate broadcast ownership in the public interest. See Pet. App. 34a. Indeed, Section 202(h) of the same statute expressly directs the FCC to determine whether to "repeal *or modify*" ownership rules that may no longer promote the public interest. 110 Stat. 112 (emphasis added). As the court of appeals recognized (Pet. App. 34a), Congress's use of the term "modify," in conjunction with the continued emphasis on the "public interest" in Section 202(h), refutes the argument that Congress intended through Section 202(a) to effectuate a drastic reduction in the scope of the FCC's traditional licensing authority. Rather, the 1996 Act's congressionally specified revisions to the Commission's rules—including those to the radio ownership rules—"determined only the starting point from which the Commission was to assess the need for further change." *Fox*, 280 F.3d at 1043.

2. Contrary to petitioners' suggestion (04-1033 Pet. 24, 29; 04-1036 Pet. 25; 04-1045 Pet. 19-20; see Clear Channel Br. 24-26), the Third Circuit's interpretation of Section 202(h) in this case does not conflict with the D.C. Circuit's decisions in *Fox* and *Sinclair*. In *Fox*, the D.C. Circuit interpreted Section 202(h) to require the Commission, if it decides to retain a particular ownership rule, to provide an adequate explanation for its decision. See 280 F.3d at 1042, 1044. Likewise, the court in *Sinclair* concluded that the Commission "has wide discretion to determine where to draw administrative lines," 284 F.3d at 162 (internal quotation marks omitted), but that the Commission must "provide a reasoned explanation for its action," *ibid.* In stating that the Commission's decision to retain, modify, or repeal an ownership rule must

be supported by a "reasoned analysis," the Third Circuit articulated essentially the same standard in this case. See Pet. App. 34a-36a. And as the Third Circuit recognized, the D.C. Circuit has now made clear that Congress's direction that the Commission retain only those rules that are "necessary in the public interest" means only that a retained rule must be useful in serving the public interest. Pet. App. 30a-33a (discussing *Cellco P'ship* v. *FCC*, 357 F.3d 88, 98 (D.C. Cir. 2004)).[12]

IV. THE CONDITIONAL CROSS-PETITION IN NO. 04-1177 SHOULD BE DENIED

For the most part, Sinclair's cross-petition in No. 04-1177 reiterates arguments that are presented in the petitions filed in Nos. 04-1033, 04-1036, and 04-1045.[13] Although none of those arguments merits this Court's review, if the Court decides to address them, it may do so by granting one or more of the petitions in this case. There is no reason—and Sinclair offers none—why the Court should also grant a duplicative conditional cross-

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[12] Tribune's suggestion (04-1036 Pet. 25) that Section 202(h) eliminated the Third Circuit's authority to stay the revised rules is without merit. A court retains the authority to grant or withhold equitable remedies "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982) (quoting *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946)). Section 202(h) does not contain any such restriction on the equitable authority of the courts.

[13] There is no basis for Sinclair's contention (04-1177 Cross-Pet. 9) that the Third Circuit's decision in this case "overrule[s]" the D.C. Circuit's decision in *Sinclair*. The *Sinclair* court concluded that the FCC had not provided an adequate explanation for limiting "voices" under the local television rule to television broadcasters. The Third Circuit below reviewed a different version of the local television rule in which the number of voices is no longer a factor and, therefore, did not consider the types of media that should count as "voices" under that rule.

petition that does not substantively add to the petitions already before the Court.

Nor should the Court entertain Sinclair's argument (04-1177 Cross-Pet. 14-16) that the local television ownership rule unconstitutionally "singles out" television broadcasters—an argument that is not otherwise presented in the petitions before the Court. The question whether television broadcasters have been singled out in violation of the First Amendment was not presented to the court of appeals by any party. Consequently, there is no decision of the court of appeals on that issue for this Court to review. See *Pennsylvania Dep't of Corr.* v. *Yeskey*, 524 U.S. 206, 212-213 (1998) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.") (citations omitted).

Sinclair's argument that the local television ownership rule violates the First Amendment is in any event without merit. A regulation may "single[] out a certain medium" without violating the First Amendment if the regulation is "justified by some special characteristic of the particular medium being regulated." *Turner*, 512 U.S. at 660-661 (internal quotation marks omitted). Although, as Sinclair notes (04-1177 Cross-Pet. 15), the FCC concluded that viewers generally consider television broadcasting and cable networks to be "good alternatives for one another" in the market for delivered video programming (Pet. App. 298a-299a (Order ¶ 143)), it also found that, because cable networks typically offer programming on a nationwide basis, they "may respond differently [from television stations] to changes in local market concentration." *Id.* at 299a (Order ¶ 145). The FCC thus reasonably concluded that it should "focus on ownership of television broadcast stations, not cable networks, to promote competition in local television markets." *Id.* at 300a.

CONCLUSION

The petitions and cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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